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UNCLAS SECTION 01 OF 02 GUATEMALA 000341

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TAGS: [ELAB](#) [ETRD](#) [PREL](#) [PGOV](#) [EAID](#) [GT](#)

SUBJECT: GUATEMALAN OPTIONS FOR LABOR STANDARDS ENFORCEMENT

REF: A. GUATEMALA 280

[1](#)B. GUATEMALA 56

Sensitive but unclassified. Please protect accordingly.

[1](#)1. (SBU) Summary: The Government of Guatemala (GOG) has identified three approaches (not mutually exclusive) to reinstate the Labor Inspectorate's authority to impose fines on employers found to be in non-compliance with labor laws. The Minister of Labor -- in congruence with our recommendations -- will recommend that the President issue an executive order to restore that authority, followed by legislation to enshrine the intent of the order in the Labor Code. While the Minister promised the Ambassador that the choice would come soon, we are working to ensure the President will forestall complicating litigation. End summary.

To resolve the question of sanction authority...

[1](#)2. (U) As noted ref (A), Ministry of Labor (MOL) representatives submitted to the inter-agency Labor Relations Working Group (LRWG) on February 7 three complementary approaches to restore the Labor Inspectorate's sanction authority against companies not in compliance with Guatemalan labor law. This authority had been removed by a 2004 Constitutional Court ruling. The three options are based on actions by the executive, legislature, and judiciary, respectively, and each potential course of action is described below. These three potential courses of action were presented to the LRWG as separate options, but the Ministry of Labor representatives recommend that any executive decree should be institutionalized by legislation.

[1](#)3. (SBU) Congruent with our Ref (A) and (B) recommendations, the Minister of Labor told the Ambassador February 4 that he will advise President Berger to release an executive order that would restore sanction authority to the MOL, despite the failure of the LRWG to achieve a consensus. The Minister will recommend that the executive order be followed by legislation to ensure that this authority and other advances in labor standards enforcement lost in the Court ruling are enshrined in the Labor Code in a constitutionally acceptable manner.

[1](#)4. (SBU) In addition to the official role of the Presidency in issuing executive orders and recommending legislation to Congress, MOL contacts note that he will also have to engage in a quiet lobbying campaign to prevent further legal challenges by the business community until legislation is formally adopted. As described below in paras 6 and 7, MOL sources assure us that the President can issue such an executive order on the presumption of constitutionality.

The Executive Course

[1](#)5. (U) Although ref (A) discussed all of the Labor Code provisions struck down or amended by the Court decision, the majority of the Labor Code remained untouched. Ref (A) noted that Article 271 retained the possibility of administrative sanctions by the Ministry of Labor. More importantly, Article 415 -- which remains in force -- specifically authorizes the Labor Inspectorate to take direct action to address labor law infractions, in conformance with Article 281, subsections L) and M), which also remain in force.

[1](#)6. (U) Article 281, subsections L) and M) authorize administrative sanctions by labor inspectors. Subsection M) in particular describes the duties of labor inspectors and notes that non-compliance with labor inspectors' citations represent violations of labor law and that the Labor Inspectorate will sanction such violations under the authorization of Article 272, subsection G), which also remains in force. Article 272, subsection G) represents the range of fines for labor code violations (between two and nine times the monthly minimum wage of non-agricultural workers for violating companies and between ten and twenty

times the daily minimum wage of non-agricultural workers for violating employees).

17. (U) Based on the authority described in paras 6 and 7, MOL contacts believe that the President has the authority to reauthorize the Labor Inspectorate to assess fines.

The Legislative Course

18. (U) The Constitutional Court case highlighted the lack of clarity on many points in the Labor Code. For this reason, the MOL will seek new legislation to restore sanction authority to the Ministry of Labor and to enact the pending 2004 labor reform, based on ILO recommendations in regard to child labor, sexual harassment, discrimination, and domestic labor. The 2004 reform package remains under review by the Tripartite Commission. Once drafted, the new legislation would need consensus in the Tripartite Commission as well as in the LRWG before the executive would send it to Congress.

The Judicial Course

19. (SBU) Although the Constitutional Court ruling was based on the presumption that the Constitution reserves all sanction authority for the judiciary, Guatemalan lawyers tell us that, in fact, the Constitution explicitly states no such thing. For this reason, Supreme Court staff attending the LRWG reportedly advocated the initiation of a judicial review. While the Constitutional Court ruling is not itself eligible for review, interested parties could file a separate case regarding the activities of the Labor Inspectorate based on the same arguments used in paras 6 and 7, above.

110. (SBU) Before the 2001 Labor Code reform, the Code indeed assigned the relevant sanction authority to the judiciary, based on agreements in the 1996 Peace Accords. The inefficiencies of that system, however, led the International Labor Organization (ILO) to recommend the 2001 reform, specifically placing sanction authority with the Ministry of Labor. Contacts in the MOL and in labor-related NGOs tell us, however, that they fear a judicial review might compound the Constitutional Court's decision should the reviewing Court make a ruling based solely on the agreements of the Peace Accords. They suggest that such a ruling may set a precedent that the Labor Code could not be reformed at all.

Comment

11. (U) It appears that the GOG will opt for a combination of options one and two. The Minister promised the Ambassador that executive action would, at a minimum, be taken, especially in view of CAFTA implications. The MOL should be able to reauthorize the Labor Inspectorate's authority. We will encourage the President's personal attention to demonstrate the Government's resolve on the issue and to forestall litigation by the business community.

112. (U) Ministry of Labor sources appear most energized by the possibility of an executive order, but realize they should also draft legislation to enshrine the intent of the order in Guatemalan law. Indeed, the GOG -- and in particular the MOL -- needs to address the slow pace of consultation and review regarding labor law legislation in general, in order to enact the pending 2004 reform package. MOL contacts assure us that they intend to develop such legislation regardless of which option becomes GOG policy.
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